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**Clerk, U.S. District and
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Donald C. Baur
(D.C. Bar No. 393621)
Jennifer A. MacLean
(D.C. Bar No. 479910)
Perkins Coie LLP
607 Fourteenth Street, NW, Suite 800
Washington, DC 20005
Phone: 202-434-1621
Fax: 202-434-1690

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITY OF COCONUT CREEK, FLORIDA)
4800 West Copans Road
Coconut Creek, FL 33063,

Plaintiff,
v.

Case: 1:09-cv-00154
Assigned To : Bates, John D.
Assign. Date : 1/27/2009
Description: FOIA/Privacy Act

SECRETARY OF THE INTERIOR)
KENNETH SALAZAR, IN HIS OFFICIAL CAPACITY)
1849 C Street NW, Washington, DC 20240,)

REGIONAL DIRECTOR FOR THE EASTERN REGION)
BUREAU OF INDIAN AFFAIRS)
FRANKLIN KEEL, IN HIS OFFICIAL CAPACITY)
545 Marriott Drive, Suite 700, Nashville, TN 37214,)

DEPARTMENT OF THE INTERIOR)
1849 C Street NW, Washington, DC 20240,)

EASTERN REGION, BUREAU OF INDIAN AFFAIRS)
545 Marriot Drive, Suite 700, Nashville, TN 37214,)

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, as amended, and Department of the Interior FOIA regulations at 43 C.F.R. Part 2, challenging the Bureau of Indian Affairs' ("BIA") improper withholding of documents responsive to the Plaintiff's October 3, 2007 FOIA request, and the failure of the U.S. Department of the Interior ("DOI") to respond to Plaintiff's April 22, 2008 administrative appeal. The October 3, 2007 request seeks copies of agency records pertaining to the Seminole Tribe's application to the BIA to take land into trust.

2. Plaintiff seeks declaratory relief that Defendants are in violation of FOIA for improperly withholding records and failure to respond to the administrative appeal, and injunctive relief that Defendants immediately and fully comply with Plaintiff's requests under FOIA.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

5. Plaintiff CITY OF COCONUT CREEK, FLORIDA ("City") is the municipality in which the current Seminole Tribe trust lands are located. Those lands are used for gaming purposes. The City has jurisdiction over the land that is the subject of an outstanding land-into-trust application.

6. The City wants to obtain requested documents concerning the Tribe's trust land application. The application is a request that the BIA take additional lands within the City into trust for the benefit of the Tribe. This action would result in a loss of jurisdiction by the City over the land. In order to participate properly in the trust process and protect the interests of the municipality, the City must exercise its legal right to review the requested documents.

7. The City is harmed by the BIA and DOI's failure to comply with FOIA, because that failure harms the City's ability to obtain information necessary to participate meaningfully in agency actions with potentially significant impacts to the City.

8. Defendant KENNETH SALAZAR is Secretary of the DOI. He is sued in his official capacity.

9. Defendant FRANKLIN KEEL is the Regional Director of the Eastern Regional Office of the BIA. He is sued in his official capacity.

10. Defendant DOI is an agency within the meaning of 5 U.S.C. § 552(f) and 43 C.F.R. § 2.3(b). DOI is the federal agency with oversight responsibility for the BIA. DOI is responsible for administrative appeals of FOIA requests submitted to the BIA.

11. Defendant BIA is an agency within the meaning of 5 U.S.C. § 552(f) and 43 C.F.R. § 2.3(b). The BIA is the federal agency with possession and control of the requested records and is responsible for fulfilling Plaintiff's request.

STATEMENT OF FACTS

STATUTORY FRAMEWORK

12. FOIA, 5 U.S.C. § 552 *et seq.*, and 43 C.F.R. Part 2, requires federal agencies to release requested records to the public unless at least one of the nine specific statutory exemptions applies.

13. Once a federal agency receives a FOIA request, the agency must respond to the requesting party within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i), 43 C.F.R. § 2.12. The response must contain, at the least, the agency's determination of whether to fulfill the request or decline to release the documents under a specific exemption, and notice of the requester's right to appeal the agency's determination. *Id.*

14. An agency must respond to a FOIA appeal within 20 working days, notifying the appealing party of the agency's determination either to uphold the denial or to release the withheld records. 5 U.S.C. § 552(a)(6)(A)(ii), 43 C.F.R. § 2.32(a).

15. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal, but must provide notice and must also provide "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B).

16. This Court has jurisdiction, upon receiving a complaint, to "enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

THE SEMINOLE TRIBE'S LAND-INTO-TRUST APPLICATION

17. The Seminole Tribe of Florida submitted a land-into-trust application on September 26, 2006, requesting that the BIA take 23.2 acres of land into trust. The land is owned by the Tribe, but currently subject to the City's jurisdiction. The proposed trust acquisition will allow the Tribe to expand the development of a large resort complex, which conflicts with the City's longstanding land use plans and conservation measures and harms the local tax base.

THE CITY'S FOIA REQUEST TO THE BIA

18. The City filed a FOIA request for documents with the Eastern Regional Office of the BIA on October 3, 2007. The request sought the following records and documents:

The responses of the Seminole Tribe of Florida (Tribe), dated August 6, 2007, to the comments submitted by the City of Coconut Creek to the Bureau of Indian Affairs (BIA) regarding the Tribe's trust land acquisition application. Specifically, I request any documents submitted by the Tribe or its representatives that directly or indirectly comment on, or address, the City's comments.

The City also requests all documents that have come into the BIA's possession since our last FOIA request, dated March 30, 2007, that are associated with the Tribe's pending trust land acquisition, as well as any other related correspondence from the BIA to the Seminole Tribe, regardless of the date.

19. Under FOIA, the BIA was required to provide a response no later than 20 working days from the date that the letter was received by the office. A response was due no later than October 31, 2007.

20. The City received a letter from Mr. Kelly Gupton, FOIA Officer at the BIA, on December 4, 2007, acknowledging receipt of the request, assigning it as "FOIA Request No. S00-08-002," and requesting more time to complete the response.

21. On January 16, 2008, Mr. Gupton called the City to report that the BIA would release responsive documents within the next week.

22. On January 31, 2008, having not received the documents, the City called Mr. Gupton, and was told that the documents had been sent to the Solicitor for review prior to release.

23. The City sent a letter to Mr. Gupton and the BIA on February 22, 2008, noting that nearly five months had passed since the request was filed and that if a complete response was not received by March 10, 2008, the City would file an administrative appeal.

24. Mr. Gupton called the City on February 25, 2008, to say the materials would be released shortly. The City received the materials on March 11, 2008. The BIA granted a partial release. The BIA identified a total of sixteen responsive documents. Eight were released in their entirety, three were partially released, and five were withheld in their entirety.

THE CITY'S APPEAL OF THE BIA'S RESPONSE

25. On April 22, 2008, the City filed an administrative appeal with DOI, challenging the BIA's decision to fully or partially withhold seven of the documents.

26. The City appealed the BIA's use of FOIA Exemption 5, as applied to documents shared with the Tribe and the environmental contractor. Exemption 5 allows predecisional documents to be kept within the agency in a manner similar to the attorney-client privilege.

However, once documents are released outside of the federal agency, they are no longer privileged and cannot be withheld under Exemption 5.

27. The City also appealed the BIA's use of FOIA Exemption 4. Exemption 4 protects information that is commercially or financially sensitive to the party who submitted it to the agency. The withheld documents do not relate to confidential economic information of the Tribe or agency, but rather to the impacts of the land acquisition and casino development on the City and County.

28. Under FOIA, DOI was required to provide a response no later than 20 working days from April 22, 2008, the date that the letter was received by the office. A response was due no later than May 20, 2008.

29. On June 20, 2008, the City received a letter from DOI acknowledging receipt of the appeal, assigning the appeal as "Appeal Number 2008-122," and noting that due to Departmental overload, DOI had not begun to process the appeal, but would "make every effort to reach a decision on your appeal as soon as possible."

30. On October 14, 2008, nearly six months after the appeal was first filed, the City sent DOI a letter, delivered via messenger. The City gave notice of its intent to seek judicial review of the matter if no response was received by November 26, 2008.

31. On January 8, 2009, having received no response, the City sent DOI a second letter regarding the appeal, delivered via messenger. The City gave notice of its intent to seek judicial review if no response was received by January 26, 2008.

32. DOI has not responded, leading the City to file this Complaint.

CAUSE OF ACTION

Violation of the Freedom of Information Act, 5 U.S.C. § 552

33. Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 32 above.

34. By failing to provide Plaintiff with all records responsive to Plaintiff's October 3, 2007 FOIA request, Defendant BIA has denied Plaintiff's right to this information under FOIA.

35. By failing to respond to Plaintiff's FOIA administrative appeal in a timely manner, Defendant DOI has denied Plaintiff's right to the records requested on appeal.

36. Unless enjoined by this Court, Defendants will continue to violate Plaintiff's legal right to access the records it requested in its October 3, 2007 FOIA request and April 22, 2008 FOIA appeal.

37. Plaintiff is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays to this Court:


- A. Declare that Defendants' failure to provide responsive documents to Plaintiff's FOIA request of October 3, 2007 and FOIA appeal of April 22, 2008 is unlawful;
- B. Order Defendants to promptly respond to Plaintiff's FOIA appeal of April 22, 2008;

C. Award Plaintiff costs and reasonable attorney fees pursuant to 5 U.S.C.

§ 552(a)(4)(E) and 28 U.S.C. § 2412;

D. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 27th day of January, 2009.

A handwritten signature in black ink, appearing to read "Donald C. Baur", is written over a horizontal line.

Donald C. Baur

(D.C. Bar No. 393621)

Jennifer A. MacLean

(D.C. Bar No. 479910)

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